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U.S. DISTRICT COURT  
DISTRICT OF UTAH

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**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DIVISION, DISTRICT OF UTAH**

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WOLF MOUNTAIN RESORTS, L.C.  
a Utah Limited Liability Company

Plaintiff,

vs.

Raymond O. Klein, individually, and as Trustee  
of the Raymond O. Klein Trust dated July 7,  
1989

Defendants.

**MEMORANDUM IN SUPPORT  
OF MOTION FOR LEAVE TO  
FILE AMENDED COMPLAINT**

Civil No. 2:02-CV-00003K

Judge Dale A. Kimball  
Magistrate Judge Ronald Boyce

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Plaintiff, Wolf Mountain Resorts, L.C. submits the following memorandum of points and authorities in support of its Motion for Leave to File Amended Complaint.

**ARGUMENT**

Federal Rule of Civil Procedure 15(a) governs amendments of pleadings. Rule 15(a) provides that a party may amend its complaint with leave of the court "and leave shall be freely given when justice so requires." This basic principle has been reinforced by numerous judicial

pronouncements and courts generally look favorably on requests to amend. *See* Wright & A. Miller, Federal Practice and Procedure §1484 (1971).

The purpose underlying Rule 15(a)'s and its liberality in the allowance of amendments is to ensure that the full controversy between the parties is presented and decided on its merits rather than on procedural technicalities. *See* Wright & A. Miller, Federal Practice Y Procedure §1484 (1971).

Allowing amendment of the complaint in the instant case is reasonable and just. The primary change made in the Amended Complaint (attached to Plaintiff's Motion for Leave to File Amended Complaint as Exhibit "A") is the addition of Raymond O. Klein as Trustee of the Raymond O. Klein Trust dated July 7, 1989 as a defendant. The original Complaint named only Raymond O. Klein in his individual capacity as a defendant. Counsel for both parties have spoken about the need to add the Trust as a defendant from early on in this case given that the Trust was the owner of the Securities at issue. The addition of the Trust as a party has therefore been anticipated by the parties and comes as no surprise.

The Amended Complaint adds no new claims or causes of action. It does flesh out in slightly greater detail the factual underpinnings to the existing causes of action. The added factual allegations are few and are closely related to the allegations of the original Complaint. These added allegations are made on the basis of evidence obtained through discovery since the filing of the original Complaint or on the basis of information learned since the filing of the original Complaint.

The only other changes made in the Amended Complaint are minor edits of the language to make the Amended Complaint clearer and better focused than the original Complaint.

The filing of Plaintiff's Amended Complaint will not prejudice any party. Plaintiff's motion for leave to amend comes at a very early stage in this litigation, well before the initial pretrial conference. Aside from the exchange of Initial Disclosures, the only discovery which has been conducted has been limited discovery requests generated by the plaintiff. Defendant has not yet conducted any discovery beyond the Initial Disclosures. Because all of defendant's discovery activity still lies ahead of him, he will have plenty of time to respond to the few changes made in the Amended Complaint, and will not be prejudiced or disadvantaged in any way.

Plaintiff's Motion for Leave to File Amended Complaint also comes before the agreed-upon cutoff dates for the joining of additional parties and the amendment of pleadings as set forth in the Report of Attorney's Planning Meeting.

Allowing amendment of the complaint in this case will serve the interests of justice because it will occur early in the litigation, will not produce any unfairness or prejudice, and will allow all of the claims and contentions arising out of the operative set of facts to be resolved in this lawsuit.

Plaintiffs therefore respectfully request that this court grant them leave to amend their complaint in this action.

DATED this 28<sup>th</sup> day of June, 2002.



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of June, 2002, I caused to be mailed, first class postage prepaid, a true and correct copy of PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT to the following:

Eric G. Easterly  
1816 Prospector Avenue  
P.O. Box 680049  
Park City, Utah 84068

